

**STATE OF MINNESOTA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**

**FOR THE DEPARTMENT OF LABOR AND INDUSTRY**

In the Matter of Terry Kern, individually, and d/b/a Kern Construction	<b>PROTECTIVE ORDER</b>
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This matter came before Administrative Law Judge Eric L. Lipman pursuant to a Notice and Order for Hearing from the Minnesota Department of Commerce ("Department").

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department, and Todd. A. Kelm, Esq., 1287 - 2<sup>nd</sup> Street North, Suite 101, Sauk Rapids, MN 56379, appeared on behalf of Terry Lee Kern, individually, and d/b/a Kern Construction ("Respondent").

In order to expedite the discovery process, the parties have requested this Protective Order to govern the disclosure and handling of data that is classified as private, confidential, nonpublic or protected nonpublic (collectively "not public" data) under the Minnesota Government Data Practices Act. See, Minn. Stat. Chap. 13 (2006).

Pursuant to Minn. Stat. § 13.03, subd. 6 (2006), the Administrative Law Judge finds that data that is classified as "not public" may be discoverable in this action and that the benefit to Respondent outweighs any harm to the confidentiality interests of the Department in maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. In order to assure the proper handling of non public data by the parties,

**IT IS HEREBY ORDERED:**

1. Data that is classified as "not public" under Minn. Stat. Ch. 13, or Minn. Stat. Ch. 363A, or other applicable law, contained in the Department's investigative or complaint files, produced during the course of discovery, shall not be further disclosed to any persons except as follows:

- (a) To the parties in this matter or attorneys representing the parties or their employees assisting counsel in the preparation of the case; and
- (b) To witnesses subpoenaed or otherwise called to testify at the hearing.

2. “Not public” data may be used only for purposes of this litigation – including discussion with investigators, employees and witnesses as necessary to prepare for, and to conduct the evidentiary hearing. Not public data shall not be disclosed for purposes not set forth in this Order.

3. All persons having access to “not public” data herein shall be informed of the Protective Order and are bound by its terms. Each party bears full responsibility for compliance with this Order by persons to whom they have disclosed “not public” information.

4. The Department shall clearly designate “not public” information to avoid inadvertent disclosure. “Not public” documents shall be kept in a separate file or envelope, marked with the legend “CONFIDENTIAL - CONTAINS NOT PUBLIC DATA.” Further, the originals and copies of deposition or hearing transcripts, or portions thereof, containing “not public” data shall bear the legend “CONFIDENTIAL - CONTAINS NOT PUBLIC DATA” and shall be maintained in a separate file or envelope. In lieu of segregating documents that contain not public data, the Department may redact the not public data, but it must clearly mark any redacted documents with the legend “NOT PUBLIC DATA REDACTED,” and it must identify the nature of the redacted data.

5. Should any party seek to use the information subject to this Order in a manner inconsistent with this Order, before disclosing the data, this party shall file with the Administrative Law Judge, and serve upon the opposing party, a motion requesting approval of these additional disclosures.

6. By stipulating to this Protective Order, the parties do not waive any later objections they may have against the disclosure of data that is not discoverable or as to which the benefit to one party is outweighed by the harm to the confidentiality interests of others.

7. Notwithstanding this Protective Order, “[a]ny civil investigative data presented as evidence in court or made part of a court record shall be made public.” See, Minn. Stat. § 13.39, subd. 3 (2006). In cases involving licensing data, “[t]he entire record concerning a disciplinary proceeding is public data pursuant to section 13.02, subdivision 15, in those instances where there is a public hearing concerning the disciplinary action.” See, Minn. Stat. § 13.41, subd. 5 (2006). Upon appropriate motion by any party, however, portions of the hearing in this matter may be closed or the hearing record may be sealed or redacted to the extent needed to permit free discussion of data that is otherwise private or confidential.

8. This Protective Order may be modified or amended upon application to the Administrative Law Judge for good cause shown.

9. Nothing in the Order is intended to limit the availability of judicial review of the final order as provided by Minn. Stat. §§ 14.63 – 14.69 (2006).

Dated: September 15, 2008

/s/ Eric L. Lipman

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ERIC L. LIPMAN  
Administrative Law Judge